

**OPINION**  
**49-175**

December 14, 1949            (OPINION)

SUPERINTENDENT OF CRIMINAL IDENTIFICATION

RE: Fingerprints

Pursuant to section 12-5804 of the 1943 Revised Code, all state's attorneys, sheriffs, chiefs of police, and other law enforcement officers shall take the fingerprints of any person who, in the judgment of the arresting officer, is wanted on a felony charge, or who, the arresting officer has reason to believe, is a fugitive from justice. Copies of such fingerprints in duplicate shall be transmitted to the superintendent of criminal identification within 24 hours after an arrested person is taken into custody, together with a description of, and all available information respecting, the arrested person.

It is my opinion that a judge of the district court, so far as the state laws of North Dakota are concerned, would be justified in relying upon the criminal record of the defendant to be sentenced as shown by the report of our State Bureau of Criminal Identification, and that he could pass sentence after ascertaining the criminal record of the defendant from that report of our State Bureau back to the arresting officer without being in violation of section 12-5808 of the 1943 Revised Code.

I believe, however, as a matter of public policy that it certainly would be well that the district judges would wait with the sentencing of defendants in felony cases until they have received the report from the Federal Bureau of Investigation at Washington, even though I do not believe they are required to wait for the federal report and that they can legally rely on the state report.

There have been several instances in our state, and other states, where extremely dangerous and wanted individuals have slipped through the fingers of local authorities because of failure to send the fingerprints to the F.B.I. in Washington.

WALLACE E. WARNER

Attorney General